

Appellant, a 61-year-old former electronics technician, has an accepted occupational disease claim for aggravation of deep venous thrombophlebitis (DVT), which arose on or about October 16, 1992. Appellant was off work from October 12, 1992 until January 13, 1993, when he returned to light duty. He sustained a recurrence of disability on February 4, 1993 and the

Office placed him on the periodic rolls. On November 15, 1993 appellant returned to part-time limited duty as a command industrial paper systems specialist. The Office continued to compensate appellant for his partial disability. Appellant sustained another recurrence of disability on December 21, 1993. He resumed his part-time limited duties on January 3, 1994. Effective February 28, 1994, Dr. Job L. Sandoval, an attending internist, released him to full-time limited duty.¹

On October 24, 2002 appellant filed a claim for recurrence of disability. He alleged that he sustained a recurrence of disability on April 25, 1998 causally related to his October 16, 1992 employment injury. Appellant stated that, after violation of light-duty work restrictions, he sustained a recurrence of his October 16, 1992 injury with resulting DVT aggravation as well as foot ulcer and gangrene.

Appellant submitted a September 19, 2002 report from Dr. Andrew J. Dowd, a surgeon, who reported that he had seen appellant over the years for several problems related to both venous and arterial disease. He stated that appellant's toe amputations were multi-factorial in origin and related to several issues. Dr. Dowd explained that appellant had a history of recurrent deep vein thrombosis, longstanding diabetes and a history of peripheral neuropathy secondary to Guillain-Barre syndrome. He noted that, at some point during his job, appellant sustained ulceration to his distal toes. This in combination with appellant's arterial disease, diabetes and longstanding neuropathy resulted ultimately in amputation.

Appellant also submitted a September 19, 2002 report from Dr. Sandoval, who recalled that appellant advised him that his employer had put him in a job that was outside of his work restrictions, which subsequently led to blisters on his feet that became infected and led to gangrene.

The employing establishment submitted documentation of appellant's resignation effective April 25, 1998. His position at the time of his resignation remained command industrial paper systems specialist. In a letter dated February 10, 2003, the employing establishment advised that in April 1998 appellant was performing work for the Combat Systems department head that was consistent with his light-duty restrictions. In addition to his duties with industrial paper, appellant performed the duties of an administrative assistant, which was a desk job that consisted of filing, drafting and distributing minutes from meetings.

In a decision dated February 26, 2003, the Office denied appellant's claim for recurrence of disability.

Appellant requested an oral hearing, which was held on October 24, 2003. He submitted numerous medical records from Drs. Dowd and Sandoval regarding the treatment he received beginning in April 1998. Appellant also submitted Dr. Dowd's May 12, 2003 deposition.

¹ Appellant's restrictions at the time were intermittent sitting up to four hours per day, two hours of intermittent walking, one hour each of intermittent lifting and bending, no squatting, climbing limited to stairs only, no kneeling, two hours of intermittent twisting and no standing. Dr. Sandoval restricted appellant's lifting to 20 pounds. He also stated that appellant should not perform any work on ships or in industrial areas. In July 1995, Dr. Sandoval increased appellant's standing to two hours intermittently. He also indicated that appellant could climb stairs for up to one hour and walk up to an eighth of a mile.

Dr. Dowd concluded that there was a causal relationship between appellant's October 16, 1992 employment injury and his current condition. He noted that appellant presented a complex medical picture and that his deep vein thrombosis predisposed him to a variety of lower extremity circulation problems, including his current conditions.

The employing establishment submitted a November 21, 2003 statement indicating that appellant was "“mostly desk bound”" and there were no previously reported complaints regarding any physical difficulties related to his duties. The employing establishment reiterated that, at the time of appellant's claimed recurrence, he was performing work consistent with his light-duty restrictions. The employing establishment noted that appellant took advantage of a voluntary separation incentive program in April 1998 and, at that time, he made no complaints about his job.

By decision dated February 11, 2004, the Office hearing representative affirmed the February 26, 2003 decision denying the claimed recurrence of disability.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition, which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.² This term also means an inability to work when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.³

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the employment-related condition or a change in the nature and extent of the light-duty job requirements.⁴

ANALYSIS

The Board finds that appellant has failed to demonstrate a change in the nature and extent of the light-duty job requirements. The employing establishment acknowledged that prior to his claimed recurrence of disability appellant had been performing administrative duties in addition

² 20 C.F.R. § 10.5(x) (1999).

³ *Id.*

⁴ *Barry C. Peterson*, 52 ECAB 120, 125 (2000); *Terry R. Hedman*, 38 ECAB 222 (1986).

to his limited-duty work as a command industrial paper systems specialist. The record, however, does not establish that these additional duties exceeded the physical limitations imposed by Dr. Sandoval in February 1994 and later expanded in July 1995. The employing establishment described appellant's additional duties as a desk job that consisted of filing, drafting and distributing minutes from meetings. These sedentary duties do not appear to exceed the physical limitations imposed by Dr. Sandoval. Consequently, appellant failed to establish a change in the nature and extent of the light-duty job requirements. Furthermore, there is no evidence that the employing establishment withdrew appellant's light-duty assignment. The record reflects that he resigned on April 25, 1998 which does not establish a basis for a claim for recurrence of disability.⁵

Appellant may also establish a claim for recurrence of disability by demonstrating a change in the nature and extent of his employment-related condition. The Office accepted his claim for aggravation of deep venous thrombophlebitis arising on or about October 16, 1992. In a September 19, 2002 report, Dr. Dowd indicated that appellant's toe amputations were multifactorial in origin and related to several issues. He explained that appellant had a history of recurrent deep vein thrombosis, longstanding diabetes and peripheral neuropathy secondary to his Guillain-Barre syndrome. Appellant sustained ulcerations to his distal toes at some point during his employment and Dr. Dowd stated that this in combination with appellant's arterial disease, diabetes and longstanding neuropathy resulted ultimately in amputation. While appellant sustained toe ulcerations during a period of employment, this fact alone does not establish that the condition is employment related. Dr. Dowd failed to adequately explain how appellant's accepted 1992 injury for aggravation of deep venous thrombophlebitis caused or contributed to the subsequent amputation of his toes and the claimed recurrence of disability as of April 25, 1998.

In a May 12, 2003 deposition, Dr. Dowd failed to provide adequate rationale supporting a causal relationship between appellant's October 16, 1992 employment injury and his claimed recurrence of disability on April 25, 1998. Dr. Dowd noted that appellant's April 1998 injury "had nothing to do with a deep vein thrombosis." He later explained that appellant's history of deep vein thrombosis predisposed him to a variety of lower extremity circulation problems, which in combination with his peripheral neuropathy would predispose him to ulcerations like the one he sustained in 1998. Dr. Dowd further stated that it would be "a reasonable and fair assumption" that appellant's October 16, 1992 injury was related to his present medical condition. Dr. Dowd did not specifically address the issue of appellant's disability as of the date he retired.

Although Dr. Dowd stated it was reasonable and fair to assume a causal relationship between appellant's accepted employment injury and his present medical condition, he did not adequately explain how the October 16, 1992 aggravation of appellant's preexisting condition predisposed appellant to the type of ulcerations he experienced in April 1998 or address the issue of his disability as of April 25, 1998.

⁵ 20 C.F.R. § 10.5(x) (1999).

Dr. Dowd's report and deposition testimony are insufficiently rationalized to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his claimed recurrence of disability is causally related to his October 16, 1992 employment injury. Accordingly, the medical evidence fails to establish a change in the nature and extent of appellant's employment-related condition.

CONCLUSION

The Board finds that appellant failed to establish that he sustained a recurrence of disability on April 25, 1998 causally related to his October 16, 1992 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 22, 2005
Washington, DC

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member